



Zoning Board of Appeals

November 12, 2009 – 5:00 p.m. – **Minutes**
133 William St., Room 314, Conference Room

View Agenda

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Board Members Present:

Annette Allard
James Mathes
Jennifer Gonsalves
Barry Sylvia

Board Members Absent:

Debra Raffa Trahan

City Staff:

Danny D. Romanowicz, Acting Commissioner of Buildings & Inspectional Services
Roberta J. Kortright, Administrative Specialist

Cases Heard:

#3959 – 20 Erin Court
#3960 – North Side of Meadow Street
#3936 – 11 Hassey Street

The meeting was called to order at 5:10 p.m.

Chairman Sylvia introduced members of the board and city staff. He read the opening remarks and explained that since there was only a four member board present that anyone who chose to be heard this evening would have to have a “super majority,” which means in order to have your case approved all four people would have to vote in the affirmative.

Chairman Sylvia also explained the time lines for their applications and the procedure the board would follow at tonight’s meeting. Realizing most of the hearings were for Variances, he read the requirements.

3959

Eric E. Cundy & Darlene K. Melchionno
20 Erin Court

Re: Petition for a Variance

Petitioner proposes to add a 10’x 17’ three season sunroom and a 9’x 10’ open deck with a landing and stairs to grade.

Communication, Sarah E. Porter, Conservation Agent, informing the Zoning Board of Appeals that this applicant has ongoing Special Conditions under Order of Conditions (SE49-415) relative to the installation of a split rail fence to establish a No Disturb Zone per the Massachusetts Wetlands Protection Act.

Board member Allard read the Communication from Danny Romanowicz, Acting Director of the Commissioner of Buildings.

Board Member Allard motioned to receive and place on file the letter from Mr. Romanowicz. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard motioned that the Appeal be received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard motioned that the plans be received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard motioned that the lots affected be received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard motioned that the letter from Senior Planner, Raymond Khalife, be received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Chairman Sylvia declared the hearing opened. There was no one present to speak on behalf of the appeal or against it. Chairman Sylvia allowed Linda Morad Councillor Ward One to explain to the Board that there may have been a conflict, but she was not sure, because she had not spoken to this constituent yet. She also asked the Board to please not take any action on this appeal because they have already paid the required fee.

Board Member Gonsalves made a motion to table case # 3959 until the end of tonight's meeting. This motion received a second by Board Member Mathes and passed unanimously on a voice vote.

3960

DPM Development Corporation

North Side of Meadow Street

Re: Petition for a Variance

Petitioner proposes to erect a 26' x 36' Single Family Dwelling.

Board Member Allard read the letter from Danny Romanowicz, Acting Director of Inspectional Services, and motioned to have it received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard read the appeal and motioned to have it received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard made a motion to have the plans received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard made a motion to have the lots affected received and placed on file. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Board Member Allard made a motion to have the letter from the Senior Planner, Raymond Khalife, received and placed on file. This motion received a second from Board Member Gonsalves and passed unanimously on a voice vote.

Chairman Sylvia declared the hearing opened and asked if there was anyone who would like to speak in favor of this appeal.

Kenneth Ferreira, Registered Engineer and Landscaper, took the podium and stated his address as 46 Foster Street, New Bedford, MA, and said he was present to speak on behalf of Dan Moniz.

Chairman Sylvia explained to Mr. Ferreira that because there were only four board members present that he would need all four votes to get his appeal approved.

Mr. Ferreira wanted to review the case before the board because there were some abutters present, and then come back when there were five members present. A discussion ensued on how to proceed. Mr. Ferreira also asked if New Bedford had adopted the "Mullin Rule," which allows a Board Member to review the tape or minutes of a meeting and then is able to cast a vote, when there are five members present.

Chairman Sylvia asked the Board Members how they would like to proceed and Board Member Allard said she would like to continue the case and hear it only once as opposed to twice.

Board Member Gonsalves said she believed that New Bedford had adopted the "Mullin Rule" because she had reviewed tapes of meetings and then participated in the vote.

Chairman Sylvia said he had not seen any such rule.

Board Member Mathes expressed his concern about the "Mullin Rule" and it being his first meeting, he preferred to leave it up to the petitioner.

There was a question about the 65 day limit to hear the appeal, but was resolved through discussion with Mr. Ferreira and the Board.

Board Member Allard made a motion to continue hearing # 3960 until the Zoning Board of Appeals meeting scheduled for December 10, 2009. This motion received a second by Board Member Mathes and passed unanimously on a voice vote.

#3936

N. Douglas Schneider & Associates, Inc.
Professional Civil Engineers and Land Surveyors

RE: A request for an extension

Ocean's Alive Scallops, 11 Hassey Street, is hereby requesting an extension of a Variance approved on December 11, 2008. The commencement of the project has been delayed due to the current economic climate, but the applicants plan on applying for a building permit during 2010.

A motion to receive and place on file the letter from N. Douglas Schneider & Associates, Inc., on behalf of Rick Miller, Ocean's Alive Scallops, Inc., 11 Hassey Street, requesting a six month extension

on a Variance approved on December 11, 2008, was made by Board Member Annette Allard and was seconded by Board Member Jennifer Gonsalves.

Mr. Rick Miller was present and stated his name and address as 171 Mendall Road, Rochester, MA 02770.

Chairman Sylvia explained that in order to grant this extension, Mr. Miller would only need three votes in the affirmative of the four members present, and Mr. Miller agreed to proceed with the Board's decision making process.

Chairman Sylvia also told the Board Members that he doesn't ever remember denying a request for an extension and that Mr. Miller's property at 11 Hassey Street is extremely well maintained.

A motion to grant an extension for a Variance that was approved on December 11, 2008, (Case #3936) and due to expire on December 11, 2009, for six months was made by Board Member Gonsalves. This motion was seconded by Board Member Allard and was passed unanimously on a voice vote.

OLD AND NEW BUSINESS

1. Approval of meeting minutes August 18, 2009 and September 24, 2009.

Some Board members did not remember receiving the minutes via e-mail, hence the above minutes were not approved.

2. Correspondence from Attorney Jared Eigerman re: United Front Homes (I) Permit Deemed Modified (760 CMR 56.05(11)(b)); (II) Permit Transferred (760 CMR 56.05 (12)(b)).

Chairman Sylvia explained to the Board what a Comprehensive Permit was and also stated that he thought that the United Front Homes' project was an excellent proposal.

Chairman Sylvia read the letter from Jared Eigerman, which explained the changes they were proposing.

Board Member Allard made a motion to receive and place on file the letter from Mr. Jared Eigerman. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

Chairman Sylvia expressed his disappointment with the City Solicitor's Office or the Attorney who represents the Zoning Board of Appeals, for not commenting on a project of this magnitude. He was particularly bothered by the fact that the Board had received three pages of information from the Law Department when a restaurant wanted to close one hour later than was originally agreed upon, and now the board has a case before them changing ownership of a property and they did not receive anything.

A motion was made by Board Member Allard to request Chairman Sylvia to draft a letter to Mr. Jared Eigerman stating that the Board was in receipt of his letter and if they had a quorum on the night their hearing was scheduled, the Board would have approved their project. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

3. Correspondence from Irene Schall, City Solicitor, to Barry W. Sylvia, Chairman of the Zoning Board of Appeals, clarifying that Attorney Jane Medeiros Friedman is the Attorney for the Zoning

Board of Appeals and that Attorney John A. Markey, Jr., is involved in the Zoning Board of Appeals if the matter is in litigation. (To be Received and Placed on File)

A motion by Board Member Gonsalves was made to receive and place on file the letter from Irene Schall. This motion received a second by Board Member Allard and passed unanimously on a voice vote.

4. At the request of Chairman Sylvia, Board Member Allard read the letter from Attorney John A. Markey, Jr., Associate Solicitor, recounting his conversation with Chairman Sylvia relative to 94 Front Street, the Rose Alley Pub.

A motion to receive and place on file the letter from Attorney John A. Markey, Jr., recounting his conversation with Chairman Sylvia relative to 94 Front Street was made by Board Member Gonsalves. This motion received a second by Board Member Allard and passed unanimously on a voice vote.

There was some confusion about the dates on the different letters and memos from the City Solicitor's Office and Chairman Sylvia expressed his frustration about both the dates and their contents.

5. Communication, Perry, Hicks, Crotty and Deshaies, LLP, to the New Bedford City Clerk, giving notice that pursuant to G.L.C. 40A, 17, Arthur Bennett, John Magnan, Peter DeWalt and Toby DeWalt filed an action in the Bristol County Superior Court seeking judicial review of a decision of the Zoning Board of Appeals, which administratively amended a previous decision of that Board to change a condition of a variance granted N.B. Vision Realty, LLC without a public hearing. (To be referred to Jane Medeiros Friedman, Attorney for the Zoning Board of Appeals)

6. Letter from Louis and Marguerite Pellerin of 3186 Acushnet Avenue, requesting that the Zoning Board of Appeals consider a revision to their recently granted variance (#3954)

A motion to receive and place on file the letter from Louis and Marguerite Pellerin was made by Board Member Allard. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

The Board discussed who would determine whether or not an Administrative Change would be the appropriate action, but they were unsure if this was the proper way to proceed.

The change in question is the extension of a driveway that was not in the original plans that were approved; however, Ms. Pellerin while giving testimony at the hearing did mention that their intent was to extend the driveway from their current house to the home they will build behind it. The only people affected would be the people that would rent the original home in the front.

Board Member Allard read a letter from Raymond Khalife, Senior Planner, stating he had reviewed the tape from the meeting when Mrs. Pellerin gave testimony and although she did mention the driveway, there was no discussion or questions from the board. Board Member Allard made a motion receive and place on file the letter from Mr. Khalife. This motion received a second by Board Member Gonsalves and passed unanimously on a voice vote.

On motion, by Zoning Board Member Jennifer Gonsalves, the Board voted to ask the Law Department if the additional relief sought should be done by an Administrative Change, notifying the abutters, and the petitioners, so they can all speak on this matter.

This motion received a second by Board Member Allard and passed unanimously on a voice vote.

Adjournment: There being no further business, a motion to adjourn was made by Board Member Gonsalves and seconded by Board Member Allard. All voted in favor. Motion carried.
The meeting was adjourned at 6:33 p.m.

Respectfully submitted,
Roberta J. Kortright

CERTIFICATE AS TO MNUTES OF MEETING OF ZONING BOARD OF APPEALS

I, Annette Allard, Clerk for the City of New Bedford Zoning Board of Appeals, certify that the above is a true and correct transcript from the minutes of the meeting of Board of Appeals, for the City of New Bedford held at 5:00 pm on September 24, 2009, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Massachusetts and bylaws of the City of New Bedford and that a quorum was present.

I further certify that the votes and resolutions of the Zoning Board of Appeals for the City of New Bedford at the meeting are operative and in full force and effect and have not been annulled or modified by any vote or resolution passed or adopted by the Board since that meeting.

Annette Allard, Clerk